IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THOMAS RAY PAYNE, Petitioner/Appellee, v. CASSANDRA R. ANDERSON, Respondent/Appellant.	)	2 CA-CV 2006-0017 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. D-20001386

Honorable Deborah Ward, Judge Pro Tempore

AFFIRMED

Cheryl K. Copperstone — Tucson
Attorney for Petitioner/Appellee

Cassandra R. Anderson — Gilbert
In Propria Persona

E S P I N O S A, Judge.

¶1 Respondent/appellant Cassandra Anderson, appearing in *propria persona*, appeals from the trial court's order granting petitioner/appellee Thomas Payne's petition to modify her child support obligation. Anderson challenges the amount of modified child support on several grounds. For the reasons set forth below, we affirm.

Factual and Procedural Background

¶2 In October 2000, the trial court dissolved Payne's and Anderson's November 1995 marriage and awarded them joint legal custody and shared physical custody of their child, Amanda. Neither party was ordered to pay child support. In December 2004, Payne petitioned the court to modify the custody and child support order, alleging he and Anderson had never shared physical custody of Amanda but Amanda had lived exclusively with him since the divorce. He sought sole custody of Amanda and to have Anderson begin paying child support pursuant to the Arizona Child Support Guidelines (hereinafter "Guidelines"). Anderson responded that she and Payne should continue to have joint legal custody of Amanda, but that she should have "sole physical custody and care."

¶3 At a settlement conference in August 2005, Payne and Anderson agreed they would continue to share joint legal custody and Anderson would begin paying child support pursuant to the Guidelines. The court ordered Anderson to pay $750 per month. In October 2005, Payne lodged the child support order with the court. Later that month, Anderson filed an objection to the order and requested a hearing "to determine whether or not income should be attributed to [Payne], in as much as [he] is not working up to his potential earning capacity." The court upheld the order, finding Payne was not intentionally underemployed and that Anderson's objection was "untimely filed." Anderson's appeal followed.

Child Support Award

¶4 On appeal, Anderson challenges the amount of child support the court ordered her to pay on several grounds. Child support awards are within the sound discretion of the trial court and we will not disturb an award absent an abuse of that discretion. *In re Marriage of Robinson and Thiel*, 201 Ariz. 328, ¶ 5, 35 P.3d 89, 92 (App. 2001). "An abuse of discretion exists when the record, viewed in the light most favorable to upholding the trial court's decision, is devoid of competent evidence to support the decision." *Arizona Dep't of Econ. Sec. v. Burton*, 205 Ariz. 27, ¶ 14, 66 P.3d 70, 73 (App. 2003). We note that the record contains no transcript or audiotape of the hearing. An appealing party is responsible for making certain the record on appeal contains all transcripts or documents necessary for us to consider the issues raised on appeal, Rule 11(b), Ariz. R. Civ. App. P., 17B A.R.S., and in their absence, we assume they would support the court's findings of fact and conclusions of law. *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995).

¶5 Anderson first claims, in determining the amount of her child support obligation, the trial court miscalculated costs associated with Amanda's care and education and failed to give her credit for several payments she had made to Payne.[1] Without a transcript of the hearing, however, we are unable to effectively address this issue because we

[1]Specifically, she claims the court miscalculated the cost of Amanda's medical insurance and after-school care, and failed to account for Payne's unreported earnings and payments Anderson had made toward summer childcare and schooling. She also argues the court failed to consider that Payne had breached both the divorce decree and an additional oral agreement between Payne and Anderson at the time of their divorce.

cannot review the factors the court considered in reaching this determination. Therefore, we must assume the evidence presented at the hearing supports the court's conclusions. *See id.*

¶6 Anderson next argues the trial court erred in finding Payne is not intentionally underemployed, and has provided estimates from several sources that suggest the average person with Payne's level of education earns more than Payne. In "affirming" the amount of its child support award, the trial court explicitly found "substantial circumstances" had affected Payne's employment opportunities. Again, without a transcript of the hearing, we must assume the evidence presented at the hearing supported its conclusion. *Id*. Thus, although statistics cited by Anderson may suggest Payne is underemployed, the court did not abuse its discretion in finding he is not *intentionally* underemployed.

¶7 Anderson also contends the trial court erroneously denied her request to admit certain evidence during the hearing, which would have reduced the amount of her child support obligation. A trial court has broad discretion in the admission of evidence, and we will not disturb its decision absent an abuse of that discretion. *See Crackel v. Allstate Ins. Co.*, 208 Ariz. 252, ¶ 59, 92 P.3d 882, 898 (App. 2004). Although a litigant generally has the right to admit relevant evidence, Rule 402, Ariz. R. Evid., 17A A.R.S., we are constrained from finding the court abused its discretion without a transcript of the hearing, which would permit us to review the basis for the court's decision. As with Anderson's other issues, we must presume evidence at the hearing supported the court's ruling. *See Baker*, 183 Ariz. at 73, 900 P.2d at 767.

Attorney Fees

¶8 In his answering brief, Payne requests attorney fees and costs "[p]ursuant to A.R.S. § 25-503(E)," which provides that an "order of modification or termination *may* include an award of attorney fees and court costs to the prevailing party." A.R.S. § 25-503(E) (emphasis added). He claims "[i]t is clear that [Anderson's] appeal is groundless and was not made in good faith. [She] simply did not and does not want to pay child support." This argument is belied by the record, however, which suggests Anderson is, and has been, willing to pay child support.[2] Payne also claims he is entitled to attorney fees pursuant to § 25-324, which permits the court to award fees "after considering the financial resources of both parties and the reasonableness of the positions." We do not find Anderson's position on appeal unreasonable, and in our discretion, we determine that no attorney fees are merited.

Disposition

¶9 We affirm the trial court's child support determination and deny Payne's request for attorney fees.

PHILIP G. ESPINOSA, Judge

[2]The record establishes Anderson paid $460 per month to Payne for Amanda's daycare expenses both before and after the divorce. And she claims to have made a pre-hearing settlement offer to Payne of $500 per month. On appeal, Anderson insists she is willing to pay child support and "[t]here is nothing [she] hold[s] more valuable than Amanda being well cared for."

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge